

IBM Agrees to Settle Foreign Bribery Allegations for \$10 Million

New York-based International Business Machine Corporation (“IBM”) has agreed to pay \$10 million to settle a complaint filed by the Securities and Exchange Commission (“SEC”) alleging that IBM subsidiaries and a majority-owned joint venture provided cash payments and improper gifts, travel and entertainment to foreign government officials in South Korea and China in violation of the Foreign Corrupt Practices Act (“FCPA”). These payments were recorded as “legitimate business expenses.” The company was charged under the provisions of the FCPA that make it unlawful to fail to make and keep accurate books and records, and to fail to maintain an adequate internal control system to detect and prevent bribery. The complaint further alleged that the illegal conduct occurred over a 10-year time period and involved over 100 IBM employees overall.

The bribery claims related to South Korea occurred from 1998 to 2003 and involved an IBM subsidiary, IBM Korea, and an IBM joint venture in which the company held a majority interest, LG IBM PC Co. Ltd. According to the complaint, employees from both entities made cash bribe payments to South Korean government officials totaling an estimated \$207,000. It was described that the cash payments were delivered in shopping bags or envelopes filled with cash and at locations that included a parking lot and an apartment complex. Employees of LG were also alleged to have provided free personal computers and paid for entertainment expenses for government officials. In all, the foreign government officials involved represented 16 South Korean government entities.

In China, between 2004 and 2009, employees of wholly owned subsidiaries IBM Investment Company Limited and IBM Global Services Co., Ltd. (“IBM China”) allegedly created “slush funds” at local travel agencies in China that were used to finance overseas trips and travel expenses for Chinese government officials. Additional slush funds were created to provide cash payments and other improper gifts to foreign officials. According the complaint, the company had policies in place that required employees to follow a travel request process, yet “IBM’s internal controls failed to detect at least 114 instances” where, among other things, fake invoices were used to match travel requests, trips were not connected to travel requests, trips involved sightseeing rather than business or promotional activity and gifts were provided to Chinese government officials. The corrupt conduct in China involved two “key IBM China managers” who facilitated the trips, and more than 100 employees of IBM China.

As stated previously, IBM was charged with violating the books and records and internal control provisions of the FCPA. These provisions apply to “issuers” of securities that trade on U.S. exchanges. The books and records provisions require that issuers make and keep financial records that, in reasonable detail, accurately reflect the issuer’s transactions and the disposition of the issuer’s assets. The internal controls provisions require issuers to devise and maintain a reasonable system of internal controls aimed at preventing and detecting FCPA violations. The SEC acknowledged that IBM had compliance policies in place that prohibited corrupt conduct and required compliance with the FCPA, but “[d]espite its extensive international operations, IBM lacked sufficient internal controls designed to prevent or detect these violations of the FCPA.” In an 8-K filing, the company indicated that it had consented to the entry of a judgment against it. If approved by the Court, the judgment would include: \$5.3 million,

representing profits gained as a result of the conduct alleged in the Complaint; prejudgment interest in the amount of \$2.7 million; and a civil penalty of \$2 million.

This enforcement action provides a reminder to global companies with foreign operations that FCPA liability can attach to the parent company for the conduct of employees in foreign subsidiaries and majority-owned joint ventures even if it has no knowledge or reason to know of corrupt activity.

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